

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: JUL 17 2000

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

NO PROTEST RECEIVED
Release copies to District

Date: [REDACTED]

Surname: [REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the written information submitted, we have concluded that you have failed to establish that you are operated exclusively for one or more exempt purposes as required by section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

You stated you are an innovative training and consulting firm that specializes in teaching etiquette to children and teenagers. Students are taught interpersonal skills such as how to develop healthy relationships, how to get along with others in the home, school, workplace, and community, how to develop leadership qualities, how to handle conflict and anger, how to respect oneself and others, and awareness of offensive language.

Classes are taught in private settings, group sessions, workshops and seminars. Business etiquette is taught to young children and adults who are seeking jobs, career enhancement and motivation. Future projected classes are multicultural etiquette, hospitality sector training, media training, driving etiquette, and church etiquette. Training activities will be offered quarterly, weekly, daily, and hourly as requested by applicants or institutions. The cost to attend private programs is [REDACTED] per session or [REDACTED] for the full course. A certified etiquette consultant administers the initial training, and the Chief Executive Officer of [REDACTED] has personally trained other training specialists.

[REDACTED]

The brochure on [REDACTED] titled [REDACTED] concerns using good manners in the business world. It advertises the benefits of business etiquette classes for businesses.

Your officers are: [REDACTED] (President), [REDACTED] (CEO), [REDACTED] (Comptroller), [REDACTED] (Marketing Manager), and [REDACTED] (Administrative Assistant). Also members of the Board include [REDACTED], [REDACTED], and [REDACTED]. According to your by-laws, your President is the principal executive officer and shall in general supervise and control all the business and affairs of the corporation.

In an article on [REDACTED] the biography of [REDACTED] stated she is the Chief Executive Officer of [REDACTED] as well as a consultant, speaker and workshop facilitator. She began the company in the fall of [REDACTED] by teaching manners to children. Today, she is reaching corporate America by teaching business etiquette. She also conducts private etiquette classes for individuals, both children and adults, who need a "refresher" course in image consulting and formal presentations, etc. In several other articles, it was indicated that [REDACTED] was the founders and consultant for [REDACTED]. The articles also indicated that she started the business when she saw a need to teach etiquette.

In response to Question 5, Part II of Form 1023, you responded you were not the outgrowth of (or successor to) another organization.

The financial data provided with the application was incomplete. It did not provide date for all fiscal years. The following information was provided in part IV of the application form.

	* (a)	* (b)	* (c)
Gross receipts from admissions, sales of merchandise . . .	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Total Revenue	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Fundraising expenses	[REDACTED]	[REDACTED]	[REDACTED]
Officers Compensation	[REDACTED]	[REDACTED]	[REDACTED]
Other salaries & wages	[REDACTED]	[REDACTED]	[REDACTED]
Interest	[REDACTED]	[REDACTED]	[REDACTED]
Occupancy	[REDACTED]	[REDACTED]	[REDACTED]
Total Expenses	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

* Years were not specified.

[REDACTED]

The balance sheet in Part IV of the application form stated:

Investments (no schedule attached)	\$ [REDACTED]
<u>Total Assets</u>	[REDACTED]
Accounts payable	\$ [REDACTED]
Mortgages and notes payable	[REDACTED]
(no scheduled attached)	[REDACTED]
<u>Total Liabilities</u>	\$ [REDACTED]
Total fund balances or net assets	\$ [REDACTED]
<u>Total liabilities & fund balances</u>	[REDACTED]
<u>or net assets</u>	\$ [REDACTED]

In our letter, dated [REDACTED] we stated:

You mentioned the foundation provides services to individuals. Are board members being paid for these services? If so, please state what these services are and state the compensation that is being paid.

If you are planning to pay salaries or provide financial assistance to members of the board, you must provide a Conflict of Interest Policy.

Your reply on [REDACTED] letterhead, dated [REDACTED] and signed by [REDACTED] Consultant, CEO, stated:

Our board members will all be on a volunteered basis, therefore the Conflict of Interest Policy would not apply to [REDACTED]

On [REDACTED] we asked the following questions:

1. In your financial statement you stated the officers, directors, and trustees are receiving compensation. In your latest submission you stated that the foundation won't be paying members of its Board. Will you pay Board members for service rendered such as teaching of classes?
2. The letterhead and pamphlets submitted are over the name of [REDACTED] Is [REDACTED] a separate organization from you? Is it a doing business as name for you? Are you a corporate successor to [REDACTED] If an organization is separate, you should explain how the activities of the two organizations are different. If

[REDACTED]

it is a successor to a previous for-profit, the attached schedule should be filed out.

On [REDACTED], your reply on [REDACTED] letterhead, stated:

1. No, the Board members will not be paid members for rendering services for [REDACTED] as teaching classes.
2. [REDACTED] was incorporated in [REDACTED]. The institution existed as an innovative training and consulting firm that specializes in providing the finest, highest quality services of training etiquette to children, teenagers and adults from their early years until adulthood both social graces and business etiquette. The goals and training sessions are designed to provide the services of teaching and cultivating a sense of self-esteem in a positive manner, building to promote strong leadership qualities through character building within the students, and dealing with "handling conflict and anger" and coping skills.

Since [REDACTED] was the principle stockholder and exercised the basic ownership of the business. Any family members or other principle stockholders that had a family relationship were primarily listed for these purposes of incorporation and protection of the business.

The company was there to provide a much needed service to the community at-large. I have fulfilled all legal obligations of corporation in doing business at that time. In [REDACTED] have worked the market and found that the targeted community historically; and continues to work with are in need of the service rendered, but or positions in an exempt organization status. For example, a local corporation sponsored me to train in several schools because funding could not be available to [REDACTED] due to the lack of not having a non-profit status. Further research has indicated that a non-profit status should be attained and to answer question #2, it appears that [REDACTED] is doing business as named for [REDACTED] and it is not a separate organization for it renders the same services. Originally we trained all private students through [REDACTED]

[REDACTED] was unaware that a non-profit organization from the beginning may have been the solution initially as many of the students that need the services are unable to afford them. Henceforth, I was under the impression that one would need a new name to apply for

exempt status. However, [REDACTED] does not fulfill the qualification of schedule one: Successors to "For-Profit" Institutions. In an attempt to comply with non-profit status, we have sent you prior documentation regarding the explanation of our Board of Directors to reflect the community at large and not just family members as under the Original Corporation. Apparently, it appears that this incorporation should be in the name of [REDACTED] as d.b.a. [REDACTED]

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. The section cross references the definition of private shareholder, which is contained in section 1-501(a)-1(c). That section provides that the words private shareholder or individual in section 501 refers to person having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational", as used in section 501(c)(3), relates to—

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 61-170, 1961-1 C.B. 112, an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. The activities of the organization inured to the benefit of its members. Rev. Rul. 61-170 can be contrasted with Rev. Rul. 65-298, 1965-2 C.B. 163. In Rev. Rul. 65-298 a non-membership organization provided seminars to members of the medical profession. These seminars are designed to lessen the time between the discovery of medical knowledge and its practical application. Unlike the organization in Rev. Rul. 61-170, the benefits that flow from the activities of the medical seminar organization flow much more directly to the general public.

Situation 2 of Rev. Rul. 69-545, 1969-2 C.B. 117, describes a hospital, otherwise serving a charitable purpose, that was denied exemption under section 501(c)(3) of the Code because it served a private interest more than incidentally. The revenue ruling states that in considering whether a nonprofit organization claiming charitable exemption is operated to serve a private benefit the Service will weigh all of the relevant facts and circumstances in each case.

Rev. Rul. 72-369, 1972-2 C.B. 245, ruled that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 76-441, 1976-2 C.B. 147, ruled that a nonprofit organization that purchases or leases at fair market value the assets of a former for-profit school and employs the former owners, who are not related to the current directors, at salaries commensurate with their responsibilities is operated exclusively for educational and charitable purposes. An organization that takes over a school's assets and its liabilities, which exceed the value of the assets and include notes owed to the former owners and current directors of the school, is serving the director's private interest and is not operated exclusively for educational and charitable purposes.

Rev. Rul. 80-287 concerns a lawyer referral service in which any member of the public can obtain an initial visit with a lawyer whose name is on an approved list maintained by the organization. The ruling states that providing services of an ordinary commercial nature in a community, even though the undertaking is conducted on a

nonprofit basis, is not regarded as conferring a charitable benefit on the community unless the service directly accomplishes one of the established categories of charitable purposes. Although the lawyer referral service provided some public benefit, a substantial purpose of the program was the promotion of the legal profession.

Rev. Proc. 90-4, 1990-2 I.R.B. 10, at section 7 provides that the Service may decline to issue a ruling or a determination letter whenever warranted by the facts or circumstances of a particular case.

Rev. Proc. 90-27, 1990-18 I.R.B. 17, provides, in part, that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or a determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Leon A. Beechly v. Commissioner, 35 T.C. 490 (1960), provided that where an exempt organization engages in a transaction with a related interest and there is a purpose to benefit the private interest rather than the organization, exemption may be lost even though the transaction ultimately proves profitable for the exempt organization.

Operating for the benefit of private parties constitutes a substantial nonexempt purpose. Old Dominion Box Co. v. United States, 477 F.2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973).

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court was called on to decide whether benefits to third parties, who were not members, would prevent the organization from being recognized as an exempt organization within

the meaning of section 501(c)(3) of the Code. The Court concluded that the organization could not confer substantial benefits on disinterested persons and still serve public purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Secondary benefits which advance a substantial purpose cannot be construed as incidental to the organization's exempt educational purpose. Indeed, such a construction would cloud the focus of the operational test, which probes to ascertain the purpose towards which an organization's activities are directed and not the nature of the activities themselves.

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36 (1989), the Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of a non-profit corporation that conducted continuing medical education tours. The petitioner had three trustees. Mr. Helin, who was a shareholder and the president of H & C Tours, a for-profit travel agency. Mr. Regan, an attorney, and a third director who was ill and did not participate. Mr. Helin served as executive director. The petitioner shared offices with H & C Tours. The petitioner used H & C Tours exclusively for all travel arrangements. The petitioner's contract with H & C Tours permitted it to acquire competitive bids, but provided that H & C Tours would always get the bid if it was within 2.5%. There is no evidence that the petitioner ever sought a competitive bid. The Court found that a substantial purpose of the petitioner was benefiting the for-profit travel agency. It concluded that:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) even if it furthers other exempt purposes.

We find that a substantial purpose of petitioner's operations was to increase the income of H & C Tours. H & C Tours benefits from the distribution and production of brochures which solicit customers for tours arranged by H & C Tours. Approximately 90 percent of petitioner's total revenue for 1977 was expended on production and distribution of brochures. The terms of the Travel Service and Administrative Support Agreement further insured that H & C Tours would substantially benefit from petitioner's operations. Petitioner did not solicit competitive bids from any travel agency other than H & C Tours.

In KJ's Fund Raisers, Inc. v. Commissioner, T.C. Memo 1997-424 (1997), affirmed 82 AFTR 2d 7092 (1998), the Tax Court found that a gaming organization was not exempt. While the organization raised money for charitable

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purposes, it also operated for the substantial benefit of private interests. The organization's founders, Kristine Hurd and James Gould, were the sole owners of a bar, KJ's Place. The organization, through the owners and employees of KJ's Place, sold lottery tickets exclusively at KJ's Place during regular business hours. While in KJ's Place, the lottery ticket purchasers were sold beverages from the bar. The initial directors were Hurd, Gould, and a related individual. The initial board was replaced several times until Hurd and Gould were no longer on the board. At all times Hurd and Gould were the organization's officers. Salaries had been paid to Hurd and Gould and rent had been paid to KJ's Place. The organization maintained that the fact that salaries and rent were no longer paid in this fashion indicated the independence of the board. The Court took another view.

Although those practices ceased and are not in issue here, the current board of directors is composed of at least the majority of the same members who allowed those amounts to be paid. This strongly suggests that Hurd and Gould are free to set policy for their own benefit without objection from the board. Nothing in the record since July 1, 1994, indicates otherwise.

The Court concluded that KJ's Fund Raisers was operated for substantial private benefit and did not qualify for exemption. The Court of Appeals affirmed the decision. It found that the organization had served the private interests of its directors in maintaining and augmenting their business interests.

We have reviewed your proposed activities and based upon the information provided we have reached the conclusion that we can not determine if you will be operated within the meaning of section 501(c)(3) of the code.

You have not provided complete documentation as to your finances, documentation regarding your mortgage payments, or fully explained your relationship with ██████████. You did not provide schedules of investment or liabilities. You did not provide complete explanations of your fundraising expenses, officers' compensation, other salaries & wages, or occupancy expense.

You have stated that you are a training and a consulting firm. You have indicated that you provide services designed to meet the needs of individuals and businesses. You have not distinguished your services from those of ██████████. You also stated that you were not an outgrowth from a for-profit corporation. However, the information provided indicates that you were formed as a result of experience with ██████████. ██████████ was formed in ██████████ and you were incorporated in ██████████. See. Rev. Rul. 76-441, supra.

[REDACTED]

You stated that board members will be on a volunteer basis and therefore a conflict of interest policy would not apply. You stated board members would not be paid for rendering services for you. Yet, you stated that [REDACTED] is the CEO as well as consultant and trainer. You also stated [REDACTED] is the principle stockholder and exercises the basic ownership of the business. Ownership and stockholders are indicators of a for-profit business. See Rev. Rul. 69-547, supra.

All of the information provided is under the name of [REDACTED]. You stated [REDACTED] was formed in [REDACTED] not [REDACTED]. You did not provide any information clarifying your use of [REDACTED] except to state that "it appears that this corporation should be in the name of [REDACTED], as d.b.a. [REDACTED]. The brochures and newspaper articles provided did not mention [REDACTED] as an organization. The brochures and articles you submitted mentioned [REDACTED] and [REDACTED].

An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the "operational test" the organization's resources must be devoted to the purposes that qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code and the applicable regulations.

Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. Here, your services are not provided at below cost, nor are they provided to tax-exempt organizations. Your services are not limited to a charitable class. See Rev. Rul. 72-369 and Rev. Rul. 287, supra.

You have provided conflicting statements regarding ownership of Unique Achievers and Mr. & Mrs. Manners, Inc. You have provided confusing information regarding compensation. Based upon the information provided, we can not determine that you are not operated for the private benefit of individuals. See the above legal citations regarding private benefit to individuals as well as Rev. Rul. 69-170 and 69-545, supra.

Rev. Proc. 90-4 and 90-27 provide that the Service may decline to rule on exempt status if the operations of the organization can not be described in sufficient detail. You have failed to establish that you will be operated exclusively for one or more exempt purposes because you have not submitted sufficient information to demonstrate that you will be operated for section 501(c)(3) purposes.

Based upon the above, you have not established that you are described in section 501(c)(3) of the code. Therefore, it is our conclusion that you do not qualify for

exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
T:EO:RA:T:4 Rm. 6236
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

~~FOR EYES ONLY~~

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4

T:EO:RA:T:4	[REDACTED]			
Initiator	Reviewer			
[REDACTED]	[REDACTED]			